Tan Seng Hin v Editor of 'See Hua Daily News' & Anor

HIGH COURT (MIRI) — SUIT NO 22–18 OF 2002(MR)
HAMID SULTAN JC
29 AUGUST 2008

Tort — Defamation — Qualified privilege — News report complained of was a report of a public meeting — Whether words complained of defamatory — Whether qualified privilege and/or justification applied — Whether there was any element of malice

Words and Phrases — 'Public meeting' — Meaning of — Whether restrictively worded in s 2 of the Defamation Act 1957

The plaintiff alleged that on 11 April 2001 the first defendant falsely and maliciously wrote and published, and the second defendant falsely and maliciously printed and published on p A2 of *See Hua Daily News* an article concerning the plaintiff which was defamatory in nature. The plaintiff alleged, inter alia, that the plaintiff (as opposed to Juara Cangceng Sdn Bhd in which he was a director) owed money to the company's creditors, was financially irresponsible, was a person who refused to pay his debt, an untrustworthy person, was unfit to become a Chinese educationalist and/or question the running of the local Chinese schools. Around the material time, the plaintiff was deported from Sarawak by the Department of Immigration of Sarawak. There were other coverage in the Chinese press reporting the plaintiff's protest that his deportation might have been due to his criticism of the way a few of the local Chinese schools were being run. The plaintiff alleged that following the press statement by the plaintiff and the surrounding press reports, the offending article was published to insinuate that the plaintiff had caused harm to persons in Sarawak and to bring into question the plaintiff's standing to question the local Chinese schools. The defendants submitted that the news report complained of was a report of a public meeting called by two lawyers on behalf of the three creditors of Juara Cangceng Sdn Bhd which was held at the Mega Hotel in Miri. A reporter of the second defendant was invited to this meeting to report the proceedings there at. It was submitted that the said reporter had reported fairly and accurately the proceedings of the said meeting. The defendants therefore relied on the defence of qualified privilege provided by s 12 of the Defamation Act 1957 ('the Act'). The defendants also submitted that on the hypothesis that the words complained of in the news report were defamatory,

the plaintiff had failed to join the persons who actually published the words complained of at the meeting at Mega Hotel.

Held, dismissing the claim with costs:

(1) The pleadings failed to satisfy the procedural rules which need to be complied with in respect of defamation suit and in respect of endorsement and the other was failure to identify intelligibly by way of pleadings and prove according to law the facts which need to be established within the concept and regime of innuendo which was seen to be a mandatory requirement under O 78 r 3 of the Rules of the High Court 1980 (see *Allsop v Church of England Newspaper Ltd* [1972] 2 QB 161; *Tolley v JS Fry & Sons Ltd* [1931] AC 333). Further there was also the fact that there was no evidence to show that the plaintiff had requested for a statement as set out in s 12(2) of the Act. The court also found that there was no merit in the defence of limitation (see para 6).

(2) As news publisher, the defendants' rights, privileges, immunities were quite different from any commercial organisations or private persons. Newspapers are ordinarily expected to report contemporary events of public interest or of public concern which is often liberally construed by courts. The truth per se is not material but the fact that such things are said in appropriate occasions by the maker might give the news media the right to publish the same. However, the law would penalise certain category of news if published wrongfully (see para 11).

(3) The evidence and pleadings showed that there was public meeting. The definition of public meeting in s 2 of the Act is not restrictively worded. The phrase 'public meeting' is defined in s 2 of the Act as 'a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether the admission to the meeting is general or restricted'. It is trite that categories of qualified privilege are not closed In England, the courts quite recently introduced a new caption referred to as 'reportage', though it was nothing more than an extension of existing principles or guidelines in this area of law (see para 12); *Charman v Orion Publishing Group Ltd* [2007] EWCA Civ 972.

(4) In the instance case, the defendants had satisfactorily established the defence, inclusive of the defence of qualified privilege, and/or justification. The court did not see any element of malice as alleged by the plaintiff (see para 12).

[Bahasa Malaysia summary

Plaintif telah mendakwa bahawa pada 11 April 2001 defendan pertama telah

secara salah dan berniat jahat telah menulis dan menerbitkan, dan defendan kedua secara salah dan berniat jahat mencetak dan menerbitkan di ms A2 See Hua Daily News sebuah artikel berkenaan dengan plaintif yang mana adalah bersifat fitnah. Plaintif mendakwa bahawa, antara lain, bahawa plaintif (yang mana adalah menentang kepada Juara Cangceng Sdn Bhd yang mana beliau adalah pengarah) berhutang kepada pemberi pinjam syarikat, tidak bertanggung jawab secara kewangan, seorang yang enggan untuk membayar hutangnya, seorang yang tidak boleh dipercayai, tidak layak untuk menjadi seorang ahli pendidikan Cina dan/atau mempersoalkan pengurusan sekolah Cina tempatan. Sekitar masa yang material, plaintif telah dideportasi daripada Sarawak oleh Jabatan Imigresen Sarawak. Terdapat liputan yang lain dalam surat khabar Cina yang melaporkan bantahan plaintif bahawa deportasinya mungkin disebabkan kritikannya berkenaan dengan cara sebahagian sekolah-sekolah Cina tempatan diuruskan. Plaintif mendakwa bahawa berlanjutan daripada kenyataan akhbar oleh plaintif dan sekitar laporan akhbar, artikel yang menyinggung telah diterbitkan yang menyindir bahawa plaintif telah menyebabkan kemudaratan kepada orang-orang di Sarawak dan mempersoalkan pendirian plaintif kepada persoalan sekolah-sekolah Cina tempatan. Defendan menghujahkan bahawa laporan berita aduan tersebut adalah satu laporan mesyuarat awam yang dipanggil oleh dua peguam bagi pihak tiga pemiutang Juara Cangceng Sdn Bhd yang telah diadakan di Mega Hotel di Miri. Pemberita defendan kedua telah dijemput ke mesyuarat tersebut untuk melaporkan perjalanan mesyuarat tersebut di sana. Adalah dihujahkan bahawa pemberita tersebut telah melaporkan secara adil dan tepat perjalanan mesyuarat tersebut. Oleh itu defendan bergantung kepada pembelaan keistimewaan mutlak yang diperuntukkan oleh s 12 Akta Fitnah 1957 ('Akta'). Defendan juga menghujahkan bahawa atas hipotisis bahawa ayat aduan dalam laporan berita adalah bersifat fitnah, plaintif telah gagal untuk menyertai orang yang sebenarnya menerbitkan ayat-ayat aduan semasa mesyuarat di Mega Hotel.

Diputuskan, menolak tuntutan dengan kos:

(1) Pliding telah gagal untuk memenuhi peraturan-peraturan prosedur yang perlu dipatuhi berkaitan dengan guaman fitnah dan berkaitan dengan pengindorsan dan yang lain adalah kegagalan untuk mengenal pasti kefahaman melalui pliding dan membuktikan berdasarkan undang-undang yang perlu dibuktikan di dalam konsep dan sistem yang menyindir yang kelihatan adalah keperluan mandatori di bawah A 78 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980 (lihat *Allsop v Church of England Newspaper Ltd* [1972] 2 QB 161; *Tolley v J S Fry & Sons Ltd* [1931] AC 333). Selanjutnya juga terdapat fakta bahawa tidak terdapat keterangan untuk menunjukkan bahawa plaintif memohon untuk

pernyataan seperti yang ditetapkan di dalam s 12(2) Akta. Mahkamah juga mendapati tidak terdapat merit di dalam pembelaan had masa (lihat perenggan 6).

(2) Sebagai penerbit berita, hak-hak defendan, keistimewaan, kekebalan adalah agak berlainan daripada organisasi komersial atau orang perseorangan. Surat khabar adalah kebiasaannya dijangkakan untuk melaporkan kejadian kepentingan awam yang kontemporari atau urusan awam yang selalunya secara liberal ditaksirkan oleh mahkamah. Kebenaran sahaja bukannya material tetapi fakta bahawa perkara tersebut diperkatakan di dalam masa yang sesuai oleh pembuat berkemungkinan memberikan media berita hak untuk menerbitkannya. Tetapi undang-undang boleh menghukum beberapa kategori berita jika diterbitkan secara salah (lihat perenggan 11).

(3) Keterangan dan pliding menunjukkan bahawa terdapat menyuarat awam. Definisi mesyuarat awam di dalam s 2 Akta tidak dinyatakan secara terbatas. Frasa 'mesyuarat awam' didefinisikan di dalam s 2 Akta sebagai 'satu mesyuarat bona fide dan secara sahnya diadakan atau untuk tujuan yang sah dan untuk lanjutan atau perbincangan apa jua perkara berkaitan awam sama ada kemasukan ke mesyuarat adalah secara am atau terbatas'. Adalah jelas bahawa kategori-kategori keistimewaan mutlak adalah tidak tertutup. Di England, mahkamah baru-bari ini memperkenalkan keterangan yang baru merujuk kepada sebagai 'pelaporan', melaluinya adalah tidak lain daripada lanjutan daripada prinsip-prinsip atau garis panduan di dalam bidang undang-undang ini (lihat perenggan 12); *Charman v Orion Publishing Group Ltd* [2007] EWCA Civ 972.

(4) Defendan telah membuktikan pembelaan yang memuaskan, termasuk pembelaan keistimewaan mutlak, dan/atau justifikasi. Mahkamah tidak melihat apa jua elemen niat jahat seperti yang didakwa oleh plaintif (lihat perenggan 12).]

Notes

For cases on qualified privilege, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 576–590.

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142 (refd)

Allsop v Church of England Newspaper Ltd [1972] 2 QB 161 (refd)

Ambrose Chung Hock Guan v Christopher Kelawing Knight & 5 Ors [2008] LNS 318 (refd)

Aspro Travel Ltd and Ors v Owners Abroad Group Pte and Ors [1995] 4 All ER 728 (refd)

Ayob bin Saud (Practicing under the style of Syarikat Ayob Bin Saud) v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ 152 (refd)
Charles Edward Victor v Malayan Banking Bhd [2008] 7 MLJ 609 (refd)
Charman v Orion Publishing Group Ltd [2007] EWCA Civ 972 (refd)
Chew Peng Cheng v Anthony Teo Tiao Gin [2008] MLJU 96; [2008] 8 CLJ 418
Chung Khiaw Bank v Hotel Rasa Sayang Sdn Bhd & Anor [1990] 1 MLJ 356 (refd)
Hasnul bin Abdul Hadi v Bulat Bin Mohamad & Anor [1978] 1 MLJ 75 (refd)
Jaafar Shaari & Siti Jama Hashim v Tan Lip Eng & Anor [1997] 4 MLJ 693 (refd)
Jamil bin Harun v Yang Kamsiah & Anor [1984] 1 MLJ 217 (refd)
Kian Lup Construction v Hong Kong Bank Malaysia Bhd [2002] 7 MLJ 283 (refd)
Le Mercier's Fine Furnishings Pte Ltd & Anor v Italcomm (Malaysia) Sdn Bhd [1996] 3 CLJ 590 (refd)
Lewis v Daily Telegraph Ltd [1963] 2 All ER 151 (refd)
Noor Asiah bt Mahmood & Anor v Randhir Singh & Ors [2000] 2 MLJ 175 (refd)
Pang Fee Yoon v Piong Kien Siong & Ors [1999] 3 MLJ 189 (refd)
Perbadanan Johor & Ors v Syed Hussein Alattas & Ors [2001] 6 CLJ 459 (refd)
Subashini Rajasingam v Saravanan Thangathoray (No 2) [2007] 4 MLJ 97
Sin Hai Estate Bhd & Ors v Lim Jit Kim & Ors [2007] 7 CLJ 443 (refd)
Tolley v JS Fry & Sons Ltd [1931] AC 333 (refd)
Turkington and others (Practising as McCartan Turkington Breen) v Times Newspapers Limited (Nothern Ireland), unreported, 2 November 2000 (refd)

Legislation referred to

Rules of the High Court 1980 O 78 r 2, O 78 r 3
Defamation Act 1957 ss 2, 8, 12, 12(2)
Limitation Ordinance Chapter 49, Schedule, art 10

Jimmy HT Wee (Jimmy HT Wee & Co Advocates) for the plaintiff.
Wong Wui Kiat (Battenberg & Talma Advocates) for the defendants.

Hamid Sultan JC:

[1] This is my judgment in respect of the defamation (libel) suit filed by the plaintiff against the defendants. Before a writ in an action for libel is issued, the law requires that it must be endorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified. (See Rules of the High Court 1980 ('RHC') O 78 r 2). This was not done in this case.

[2] I consider the failure to comply with this order is fatal as this is a specific provision and is seen to be a condition precedent to be met with before the writ of defamation can be issued. Those who file defamation suits are not allowed to do so in a cavalier manner and this is the effect of O 78 which the court is obliged to give effect. Unlike the general provision for writs, failure of endorsement may not be fatal when the statement of claim is annexed and served on the defendants. However, O 78 r 2 of the RHC is a specific provision as opposed to O 6 r 2 of the RHC. On this issue alone the plaintiff's suit ought to be dismissed. However, since the defendants have not taken objection at the commencement of the proceedings, the safer approach for me is to hear the case on merits.

[3] The plaintiff has also filed two other similar suits against other publishers which were heard one after the other. The suit numbers are as follows: (i) CS–22–19 of 2002(MR) (ii) CS–22–20 of 2002 (MR); separate judgments have been delivered for all the suits, with the similar grounds notwithstanding the fact that the defendants in these cases have not pleaded the specific defences. In principle, all the parties in these suits have no objection to the court doing so.

[4] At the commencement of the hearing, parties have agreed that the case can be heard by way of: (i) witness statement for examination-in-chief; (ii) preliminary cross-examination witness statement, with full liberty to further cross-examine orally (for purposes of cross-examination); (iii) preliminary re-examination statement with full liberty to further re-examination if there is further oral examination. The court is extremely grateful to the parties for agreeing to such a mode as the preliminary cross-xamination witness statement will save much of the court's time to deal with peripheral matters and for all practical purpose, preliminary cross-examination witness statement will stand as interrogatories and answers thereto only, as the right of oral cross-examination to the litigant is preserved during the whole trial. The plaintiff relies on the following cases (i) *Jaafar Shaari & Siti Jama Hashim v Tan Lip Eng & Anor* [1997] 4 MLJ 693; (ii) *Hasnul bin Abdul Hadi v Bulat bin Mohamad & Anor* [1978] 1 MLJ 75; (iii) *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151; (iv) *Le Mercier's Fine Furnishings Pte Ltd & Anor v Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590; (iv) *Ayob bin Saud (Practicing under the style of Syarikat Ayob Bin Saud) v TS Sambanthamurthi* [1989] 1 CLJ 152; (v) *Pang Fee Yoon v Piong Kien Siong & Ors* [1999] 3 MLJ 189; (vi) *Noor Asiah Mahmood & Anor v Randhir Singh & Ors* [2000] 2 MLJ 175; (vii) *Perbadanan Johor & Ors v Syed Hussein Alattas & Ors* [2001] 6 CLJ 459; (viii) *Charles Edward Victor v Malayan Banking Bhd* [2008] 7 MLJ 609.

The defendants rely on the following cases: (i) *Aspro Travel Ltd and Ors v Owners Abroad Group Pte and Ors* [1995] 4 All ER 728; (ii) *Turkington and others (Practising as McCartan Turkington Breen) v Times Newspapers Limited*

(Nothern Ireland), unreported, 2 November 2000; (iii) *Chung Khiaw Bank v Hotel Rasa Sayang Sdn Bhd & Anor* [1990] 1 MLJ 356; *Subashini Rajasingam v Saravanan Thangathoray (No 2)* [2007] 4 MLJ 97; (iv) *Jamil Bin Harun v Yang Kamsiah & Anor* [1984] 1 MLJ 217; *Sin Hai Estate Bhd & Ors v Lim Jit Kim & Ors* [2007] 7 CLJ 443; (v) *Kian Lup Construction v Hong Kong Bank Malaysia Bhd* [2002] 7 MLJ 283; (vi) *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] MLJU 96; [2008] 8 CLJ 418.

BRIEF FACTS

[5] The plaintiff says that on 11 April 2001 the first defendant falsely and maliciously wrote and published, and the second defendant falsely and maliciously printed and published on p A2 of 'See Hua Daily News' an article concerning the plaintiff in the following words:

> ONE WOUND-UP COMPANY HAS NOT SUBMIT MADE OF REPAYMENT THREE CREDITORS SEEK SPEEDY PROCESS:
>
> (Miri, 10th Day News) As no proposal has up to today been submitted by Juara Cangceng Sdn Bhd (CO 97734-T) a company which has been wound up on the 15th of July 1999 due to indebtedness. Creditors intends to jointly form a committee to ask the relevant authority to expedite this case.
>
> Three Creditors of this commercial case through two lawyers in the press conference held at the Mega Hotel tonight indicated that because this indebted company has been wound up and no arrangement for the speedy repayment of their debt have been received they are facing financial inconveniences.
>
> These three creditors includes Yung Lung Aluminium Sdn Bhd's owner Mr Chong, Bandar Trading Company's owner Mr Toh and Godes (Miri) Sdn Bhd's owner Mr Tan, they were owed about $200,000 by Juara Cangceng inclusive of $110,000 to Jiu Luong Glass & Aluminium $54,800 to Bandar Trading and $18,000 to Godes (Miri) Sdn Bhd.
>
> Three of them said that the above debts were owed bv Juara Cangceng from materials supplied and some works done by them for Juara Cangceng when the latter was constructing a building for Pei Min Secondary School and interior decoration of a commercial shop at Jalan Merbau.
>
> They said that according to their sources Juara Cangceng owed about ten local companies after it closed down and because it is incorporated as a limited liability company. these companies have no,way to collect their debts from the person responsible for the company's debt other than to apply to wind up the company to seek payment of their debt.
>
> In circumstances to ensure that this case can be speedily dealt with and a reasonable compensation can be obtained, they urge those companies which have not registered with the relevant authority to jointly form a committee through lawyer to actively pursue the matter.

> The three creditors who gave the press conference tonight also expressed concern over the matter of one of the three persons responsible for Juara Cangceng, Mr. Tan Sen Hin who was deported by the Immigration Department before Chinese New Year and hope that Mr. Tan can assist them and make arrangement to collect the debts from Juara Cangceng.
>
> They also pointed out that Mr. Tan is the managing Director of Juara Cangceng, whereas his two other partners one of them from Labuan, Roslina binti Abdullah the other with a registered address in Lutong, Jemat Baga are the Directors.
>
> Three of them indicated that they have never met with the two bumiputra directors nor do they know them. The main reason being the three of them have all along dealt with the Managing Director Mr. Tan Seng Hin in their business dealing with Juara Cangceng and these transactions were done by Tan Seng Hin on behalf of Juara Cangceng.
>
> Before being wound up Juara Cangceng had in 1995 through the High Court sued a Joint Venture company made up of local businessmen and foreign investors claiming compensation amounting to $3,000.00.00.
>
> According to sources, Juara Cangceng was owed this substantial amount for contracting pipeline work for the Joint Venture Company in Bintulu. And this case is pending hearing.

And the plaintiff says: (i) (a) the plaintiff (as opposed to the company in which he is a director) owes money to the company's creditors; (b) the plaintiff (as opposed to the company in which he is a director) is personally responsible for paying back the money owed by the company; (c) the plaintiff (as opposed to the company in which he is a director) is financially irresponsible; (d) the plaintiff (as opposed to the company in which he is a director) is a person who refuses to pay his debt; (e) the plaintiff is a person who evades the creditors of this company; and/or (f) the plaintiff is an untrustworthy person; (g) the reason why the plaintiff was deported was because he refused to pay his debt to his creditors; (h) the plaintiff is unfit to become a Chinese educationalist and/or question the running of the local Chinese schools. That on 6 December 2000 the plaintiff was deported from Sarawak by the Department of Immigration of Sarawak. The plaintiff's deportation was widely covered in the Chinese press. On 4 April 2001, the Deputy Chief Minister of Sarawak, Tan Sri Dr George Chan ('Dr Chan') gave a press statement which was widely covered in the Chinese press to the effect that: the plaintiff was deported because he had carried out extremist activities; that the State Immigration Department need not give any reason for deporting anyone, and repeat that the Immigration Department would not deport a person unless he had carried out extremist activities and the plaintiff should explain why he was blacklisted by the Singapore Government and barred from entry in Singapore. In response to the aforesaid statement by Dr Chan, the plaintiff gave a press statement on 6 April 2001 to the effect that: For the benefit of all citizens and so that the people can make up their own mind, the Sarawak Government should explain just what 'extremist

A activities' the plaintiff had done in Sarawak; that he had never done anything against his conscience and that he had never done anything causing harm to any person in Sarawak. That around the material time, there were other coverage in the Chinese press reporting the plaintiff's protest that his deportation may have been due to his criticism of the way a few of the local B Chinese schools were being run. Following the press statement by the plaintiff and the surrounding press reports, the offending article was published to insinuate that the plaintiff had caused harm to persons in Sarawak and to bring into question the plaintiff's standing to question the local Chinese schools. By reason of the publication of said article the plaintiff C has been put to considerable distress, embarrassment, serious injury to his character, credit and reputation and has been brought into public scandal, odium and contempt. (iv) the plaintiff will rely on the following facts and matters to support his claim for aggravated damages; the offending article was published in a sensational manner. The defendants knew or ought to have D known that the allegations were untrue. The court will be asked to infer that the defendants published the said article: (i) in the knowledge that they were libellous and/or with a reckless disregard as to whether or not they were libellous; and (ii) having established that the prospect of material advantage to themselves by reason of their publication outweighed the prospect of E material loss. (v) And the plaintiff therefore claims against the first and second defendants jointly and/or severally: (a) damages including aggravated damages; (b) interest thereon; (c) costs and etc.

The defendants' defence, inter alia, reads as follows: (i) the news report F complained of is a report of a public meeting called by two lawyers on behalf of the three creditors of Juara Cangceng Sdn Bhd which was held at the Mega Hotel in Miri. A reporter of the second defendant was invited to this meeting to report the proceedings there at. The said reporter has reported fairly and accurately the proceedings of the said meeting. The defendants therefore rely G on the defence of qualified privilege provided by s 12 of the Defamation Act ('DA 1957'). (ii) In so far as the matters complained of in this action consist of comments or opinions, the defendants rely on the defence of fair comment because the matters reported or commented upon were of public interest. (iii) On the hypothesis that the words complained of in the news report were H defamatory (which is denied), the plaintiff has failed to join the persons who actually published the words complained of at the meeting at Mega Hotel. (iv) The defendants further say that the claims of the plaintiff against them are barred by art 10 of the Schedule to the Limitation Ordinance Chapter 49.

I

PRELIMINARIES

[6] Five witnesses gave evidence for the plaintiff and one for the defendants. In this case, the pleadings failed to satisfy the procedural rules which need to

be complied with in respect of defamation suit and in respect of endorsement which was referred to earlier and the other was failure to identify intelligibly by way of pleadings and prove according to law the facts which need to be established within the concept and regime of innuendo which is seen to be a mandatory requirement under O 78 r 3 of the RHC 1980 (see *Allsop v Church of England Newspaper Ltd* [1972] 2 QB 161; *Tolley v JS Fry & Sons Ltd* [1931] AC 333). Notwithstanding fatal procedural defects I have taken the liberty to assess the plaintiff's case taking note of the non-compliance of mandatory procedural requirement, and also the fact that there is no evidence to show that the plaintiff has requested for a statement as set out in s 12(2) of the DA 1957 which reads as follows:

> (2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

I also find no merit in the defence of limitation.

THE PLAINTIFF'S VERSION

[7] The plaintiff gave evidence, in my own words, to show he has substantial standing in society and attempted to show he was (i) a graduate of Nanyang University Singapore; (ii) deputy general manager of a company in China; (iii) at the time of the incident, secretary of Hainan Association, Miri; (iv) championing Chinese education; (vi) finally deported from Sarawak due to some political oppression against him and (vii) newspapers have been repeatedly publishing news related to him in an unfair manner and his present complaint is in respect of the article published by the defendant and he says in evidence:

> When I read the article, my first impression is that Juara Cangceng Sdn Bhd had been would up two years before that, and why is it being brought up now. Further more, this article was referred to my by a friend of mine. At the time, I had been deported and I was in Johor Bahru. My feeling is that this article is purely designed to attack my character — that I personally owe people's money. That I am personally responsible for paying back of the money owed by Juara Cangceng Sdn Bhd, I am financially irresponsible, I refuse to pay my debts and I am a person who evades the creditors of the company.

A The article also clearly published that the creditors know that there's a separation between the legal entity and me that the debt is owed by the company and not me personally. And yet they are bringing up this matter two years later against me personally but not against the other two *bumiputra* shareholders in the company. And my deportation also added to the insult.

B

THE DEFENDANTS' ARGUMENT

[8] The defendants say that the plaintiff must prove the following three element of the tort of defamation, which are: (i) the plaintiff must show that C the statement bears defamatory imputations; (ii) the statement must refer to or reflect upon the plaintiff's reputation; and (not or) (iii) the statement must have been published to a third person by the defendant. And says the plaintiff has not done so and the article complained off does not bear defamatory D imputation or refer to or reflect upon the plaintiff's reputation. In consequence, the defendants assert that the plaintiff's claim must be dismissed. And relies on the following cases:

(a) *Kian Lup Construction v Hongkong Bank Malaysia Bhd* [2002] 7 MLJ 283, where it was stated: E

> Defamation is committed when the defendant publishes to a third person words or matters containing untrue imputation against the reputation of the plaintiff. Liability for defamation is divided into two categories, that of libel and slander. If the publication is made in a permanent form or is broadcast F or is part of a theatrical performance, it is libel if it is in some transient form or is conveyed by spoken words or gestures, it is slander. (see: *Gatley on Libel and Slander* (9th Ed) at p 6).

(b) *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] G 1 CLJ 152), where the court opined:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were H published. Where a defence of qualified privilege is set up, as in the present case, the burden lies on the defendant to prove that he made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff in this case to show actual or express malice I which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged: *Rajagopal v Rajan*.

(c) *Chew Peng Cheng v Anthony Teo Tiao* [2008] MLJU 96; [2008] 8 CLJ 418, where it was stated:

> Further, the meaning of the words is a question entirely for the court. The meaning intended by the publishers is irrelevant for the purpose of construing the words. The test of objective and not subjective. The real question for the court to determine is whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libellous sense.

(d) (*Syed Husin Ali v Syarikat Percetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56, where the court ruled:

> In determining the issue, this court does not look to the actual effect of the allegations on the person's reputation, or the meaning of the words actually understood or taken by the listeners. (see: *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334). It is not enough that the listeners actually take the words in a defamatory sense, for they must be reasonably justified in so understanding the rods before they are found to be defamatory. (see *The Straits Times Press [1975] Ltd v The Workers' Party & Anor* [1987] 1 MLJ 186).

(e) *Aspro Travel Ltd & Ors v Owners Abroad Group Plc & Ors* [1995] 4 All ER 728, where it was stated:

> I do not consider that it is capable of being defamatory to say that he is a director of a company that is in serious financial difficulty. But it may be defamatory to say that he is causing or permitting it to trade while insolvent. For example, it may be clear from the context or form of the words that the cause of the insolvency is misconduct or mismanagement of the company's affairs; if, as is accepted here, the statement can be understood to refer to the directors that would be defamatory.

[9] Further the defendants say that (i) they are entitled to the defence of qualified privilege as the article is a fair and accurate report of press conference. (ii) the defendants are also entitled to the defence of qualified privilege provided by s 12 of the DA 1957, and rely on the case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142, where it was stated:

> Qualified privilege is a right limited to an individual who stands in such relation to the circumstances that he is entitled to say or write that which would be libellous on the part of any one else. A privilege occasion is one which the privileged person is entitled to say something which no one who is not within the privilege is entitled to say on that occasion. It is a question of law as to whether an occasion is privileged, as the plea is raised in defence. The question whether the occasion on which the statement was made was a privileged one is a question for the judge and the defendant bears the burden of establishing the facts and circumstances necessary to create the privilege.

[10] Further, the defendants in reliance of the House of Lords decision in *Turkington & Anors (Practising as McCartan Turkington Breen) v Times Newspapers Limited (Northern Ireland),* Unreported, 2 November 2000, says that it is a popular international judicial trend now that news organisations have been given greater protection against libel actions in a ruling from the law lords which stressed 'the cardinal importance of press freedom'. The House of Lords ruled that newspapers could rely on the defence of qualified privilege if they carried accurate reports of news releases issued at press conferences. Lord Bingham of Cornhill opined:

> I am of the clear opinion that the press conference held on 23 January was a public meeting within the meaning of s 7 and para 9. I reach that conclusion for these reasons:
>
> (1) In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informal about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of a modern participatory democracy requires that the media be free, active, professional and enquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction.
>
> (2) In the present case the role of the press is different. It is that of reporter. The press then acts, in a very literal sense, as a medium of communication...
>
> (3) The effect of the legislation in 1955 was to grant qualified privilege to newspaper reports of public meetings, subject to the stringent conditions just noted. This grant (as in 1881, 1888 and 1952) must have been intended to enable citizens to participate in the public life of their society, even if only indirectly, in an informed and intelligent way. Since very few people could personally witness any proceedings or attend any meeting in question, it was intended to put others, by reading newspaper reports, in a comparable position. The privilege was not extended to newspaper reports of the proceedings of private bodies and private meetings, because those are proceedings which by definition the public do not witness and to which the public do not

have access: the object was not to put the newspaper reader in a better position than one who was able to attend the proceedings or meeting in person.

(4) Although the 1955 reference to 'public meeting' derives from 1888, it must be interpreted in a manner which gives effect to the intention of the legislature in the social and other conditions which obtain today... Thus 'public', a familiar term, must be given its ordinary meaning. A meeting is public if those who organise it or arrange it open it to the public or, by issuing a general invitation to the press, manifest an intention or desire that the proceedings of the meeting should be communicated to a wider public. Press representatives may be regarded either as members of the public (as made clear by the language of para 10 of the Schedule) or as the eyes and ears of the public to whom they report. A meeting is private if it is not open to the members of the public and if it is not intended that the proceedings of a meeting should be communicated to the public, unless perhaps by the body which holds the meeting... A press conference, attended by members of the press and perhaps other members of the public, has become an important vehicle for promoting the discussion and furtherance of matters of public concern, and there is nothing in the nature of such conference which takes it outside the ordinary meaning of 'public meeting'.

[11] I have heard the evidence, read the documents and submission of the parties in detail. I take the view that the plaintiff's action must be dismissed. My reasons are as follows:

(i) By no stretch of imagination can any reasonable man say in considering the natural and ordinary meaning complained of, that the words complained off are defamatory and in particular they were defamatory of the plaintiff. Further, the meaning of the words is a question entirely for the court. The test is objective and not subjective. In this context, there are merits in the defendants' submission which states as follows:

(a) The article did not allege that the plaintiff himself personally owes the money to the creditors.

(b) The plaintiff had admitted in his own witness statement that the defendants' article had made it clear that there is a separation between the legal entity between Juara Cangceng Sdn Bhd which owed money and himself as director of Juara Cangceng Sdn Bhd which does not own money.

(c) The articles also made it clear that creditors are seeking payment from the company itself and not from the plaintiff or person responsible for the company.

(ii) I have dealt with the law of defamation and its defence in the case of *Chew Peng Cheng* and *Ambrose Chung Hock Guan v Christopher Kelawing Knight & 5 Ors* [2008] LNS 318. I do not wish to repeat the same here, save that this judgment must be read together with that instant case in respect of the principles and law for completion only. Having said that it is my finding that the plaintiff has not made out a case and also within the regime and concept of innuendo (see *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). The plaintiff's reliance of the case *Le Mercier's Fine Furnishing Pte Ltd & Anor v Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590 is misconceived on the facts of this case. In *Le Mercier*, the plaintiffs sued the defendants for defamation. Besides natural and ordinary meaning, the plaintiffs relied on innuendo as one of their cause of action against the defendants. Both the plaintiffs and defendants were sellers of high quality European furniture. One day, the defendants advertised in the *News Straits Times* an advertisement which stated that 'Italy leading supplier of fine Italian furniture ABITA ITALIA, is the only genuine Italian display centre in Kuala Lumpur'. The plaintiffs took offence and sued the defendants. The extrinsic fact relied on by the plaintiffs was that the plaintiffs are the only other retailer engaged in this special class trade. The plaintiffs claimed that the alleged defamatory meaning would be sufficient to entitle a reasonable man with this special knowledge to interpret the words to mean that the plaintiffs are dishonest and/or dealing in fake and/or imitation items of Italian furniture and that they did in fact cheat their clients. The court ruled that in its opinion, the reasonable man knowing that the parties are the only two establishment engaged in this nature of business would come to a conclusion that the alleged statement has an extended meaning to that of the plaintiffs being an imitator, cheat and retailer of fake goods.

In the instant case, the defendants are news publisher. Their rights, privileges, immunities are quiet different from any commercial organisations or private persons. Newspapers are ordinarily expected to report contemporary events of public interest or of public concern which is often liberally construed by courts. In this context, news is defined by the *Concise Oxford Dictionary* as information about important or interesting recent events. That is to say in our context, what the newsman sees or hears from the original source in relation to publication. The truth per se is not material but the fact that such things were said in appropriate occasions by the maker may give the news media the right to publish the same. However, the law salise certain category of news if published wrongfully. This has been documented in various cases where the recognised defence in this area of law is now well established. In

our case, the defendants say it is true in substance and/or the defence of qualified privilege will apply. A perusal of the defence will show that inter alia, the defendants are relying on ss 8 and 12 of the DA 1957.

[12] It is my finding that the evidence and pleadings show that there was public meeting. The definition of public meeting in s 2 of the DA 1957 is not restrictively worded. The phrase 'public meeting' is defined in s 2 of the DA 1957 as 'a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern whether the admission to the meeting is general or restricted'. It is trite that categories of qualified privilege are not closed. In England, the courts quite recently has introduced a new caption referred to as 'reportage', though it is nothing more than an extension of existing principles or guidelines in this area of law. The English Court of Appeal in the case of *Charman v Orion Publishing Group Ltd* [2007] EWCA Civ 972, made the following observation:

> *Common Law Privilege*
>
> Before I endeavour to apply the principles set out above to the facts of the present case, there are a number of general observations which need to be made. The first is that I readily accept that the problem of corruption within a police force is a matter of grave public concern. Particular case histories, of which *Brennan* is one, are equally of legitimate public interest. This was common ground between the parties.
>
> Part of the underlying purpose of the House of Lords in *Reynold* is effecting a change to the common law defence of qualified privilege was to reflect the concern felt in some quarters that a greater degree of freedom of publication was required in regard to the reporting of matters of public interest in circumstances where the defendant publisher was unable to prove the truth of what the intended to publish. The House of Lords adopted as a new criterion of privilege the test of responsible journalism. lt is well known that hitherto the defence of privilege based on responsible journalism has failed more often than it has succeeded. I accept that the court must be on its guard not to set an unrealistically high standard of journalism or authorship. I bear in mind what Lord Nicholl said in *Reynolds* at p 202:
>
> > The common law does not seek to set a higher standard than that of responsible journalism, as standard the media themselves espouse.
>
> An unusual feature of the present case is that McLagan laid great stress both in his witness statement and in his oral evidence upon the fact that *Bent Copper* is, as he put it, a balanced and non-partisan account of the public dispute between CIB on the one hand and *Charman* and *Redgrave* on the other, based on material the public domain. I will shortly have to decide if those claims are made out. lt seems to me, however, that before I address those issues I should first consider whether, as McLagan claims, the passages of which *Charman* complains constitute 'reportage' in the sense in which that term is used in *Al-Fagih* and later cases. lf those passages do constitute reportage, the requirements of responsible journalism are or maybe significantly relaxed.

A ln *Al-Fagih*, Simon Brown LJ described reportage as 'a convenient word to describe the neutral reporting attributed allegations rather than their adoption by the newspaper'. The court held that in such a situation the public was entitled to be informed of such a dispute without having to wait for the publisher, following an attempt at verification, to commit himself to one side or the other.

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I think it is not necessary for me to dwell with this extended principle in this case save to say that the defendants have satisfactorily established the defence, inclusive of the defence of qualified privilege, and/or justification. I do not see any element of malice as alleged by the plaintiff.

C

The plaintiff and defendants have also heavily relied on the relevant phrase in my judgment in *Chew Peng Cheng* supportive of the case, which reads as follow:

D

(a) The definition of defamation is not a static concept to give recognition to the time immemorial principle that there must be certainty in law. This is one area of law where in almost all cases judges suffer difficulties in trying to understand the definition and

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applying it in changing circumstances and value in society. In addition, lot of plucking of sum for the purpose of compensation is usually made of by the court with no deliberation on the methodology employed. Some of the figures awarded have in actual fact scandalised the judges and brought great shame to the judiciary.

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(b) I do not think the words complained of can be construed as defamatory in this time and era where public perception to accountability, transparency, good governance in respect of people holding office, or position, or who get involved in the affairs of

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organisation such as associations has become more and more, a subject matter of critical scrutiny by the public or by those who are associated with it. Even, judicial institution which has been given absolute protection under the Federal Constitution has been the subject matter of critical comment in respect of their conduct as

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judges. In fact, the Federal Constitution art 127, says the conduct of the judge cannot be questioned unless the procedure in the said article is complied with; that article reads as follows:

> The conduct of a judge of the Federal Court, the Court of Appeal

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> or a High Court shall not be discussed in either House of Parliament except on a substantive motion of which notice has been given by not less than one quarter of the total number of members of that House, and shall not be discussed in the Legislative Assembly of any state.

Notwithstanding such a sacrosanct protection, public demand for accountability, transparency and good governance has won the day, and judges' conduct as a judge is liberally attacked, that too in breach of natural justice without the judge being given an opportunity to reply in public his reasons, or his side of the story. It is beyond doubt that such attacks put the judge into hatred, ridicule, or contempt in the mind of reasonable man with no remedy for the judge, unless he initiates defamatory proceeding, or lodges a criminal complaint. Such action by a judge is not commonly precedented in the commonwealth. This may be because of practical reasons, primarily for the judge to safe guard the dignity of his office. As I said earlier, definition of defamation is not a static concept. It must meet with the revolutionary thoughts of men from time to time as the test is objective. Now the focus being transparency, accountability, good governance etc. Thus, purely objecting to criticism by filling suits for defamation that too in millions of ringgit when issues of transparency, accountability and good governance is the focal point of the attack, does not promote constitutional rights to freedom of speech. I take the view that the courts now will be reluctant to entertain them, unless the attacks are in the nature which has no nexus and/or is not inextricably interwoven to the concept of transparency, accountability and corporate governance, and such acts are done with malice purely to assassinate the character of the individual personally and destroy his family, quality of life and privacy.

(c) Even if I am wrong, I take the view that the words complained of does not expose the plaintiff to hatred, ridicule or contempt or contempt in the mind of a reasonable man in this time and era, or would tend to lower the plaintiff in the estimation of right thinking members of society.

(d) I also take the view by setting out the circumstances leading to the publication of the purported offensive words the defendants have proved substantial justification of the whole libel and there does not appear to be element of malice, taking into consideration the complaint and dissatisfaction was addressed to the plaintiff directly.

(e) In addition, the submission of the defendants on fair comment has some merits and the defendants are entitled on the facts of the case to make such comments though it may be critical. Any fair minded person would have reasonably done so. I do not find any element of malice as it cannot be said the facts stated in the publication were false or the defendant made the publication recklessly.

(f) I also think there is merit in the submission of the defendant in respect of the defence of qualified privilege. It is beyond doubt in this case there is a legal, moral, or social duty to make the statement on one side and there is corresponding interest to receive it on the other side. From the facts leading to the publication, I do not find the defendant's conduct is spiked with malice.

[13] In the instant case I do not see the article to be defamatory of the plaintiff notwithstanding the fact that the plaintiff feels it is defamatory. This is most unfortunate, as the plaintiff himself has put himself in a position of name and fame to be respected but fate has not properly allowed him to live according to his reputation. At times excessive fame may also bring pain and suffering as the plaintiff's case will show in consequence of the scandalous position reflected in the status of the company of which he was the managing director. The fact that he was a managing director of a company which cannot meet the debts was something he has to accept as truth and the law of defamation does not give a remedy on the facts of this case when the truth is repeated in various forms and manner and that too in various publications.

[14] For reasons stated above, I dismiss the plaintiff's claim with costs. The getting up fees shall not exceed RM50,000. If costs cannot be agreed the defendants are liberty to tax the cost.

I hereby order so.

Claim dismissed with costs.

Reported by Sally Kee